

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TOPSTEPTRADER, LLC,)
Plaintiff,) Case Number 17-cv-4412
v.) Judge: Hon. Harry D. Leinenweber
ONEUP TRADER, LLC,)
Defendant.)

)

ONEUP TRADER, LLC'S MOTION TO DISMISS SECOND AMENDED COMPLAINT

OneUp Trader, LLC (“OneUp”), by its attorneys, moves this Court to dismiss the Second Amended Complaint filed by Topsteptrader, LLC (“Topstep”), pursuant to Federal Rule of Civil Procedure 12(b)(6).

1. Topstep has failed to state a claim against OneUp for copyright infringement (count I) because, as a matter of law, the two works at issue are not substantially similar.
2. Topstep has failed to state a claim against OneUp for breach of contract (count II) because it has failed to allege sufficient facts from which it could be concluded that OneUp accepted Topstep’s website terms of use and because those terms of use are unenforceable.
3. Topstep has failed to state a claim against OneUp for unjust enrichment (count III) because it has failed to allege facts showing that OneUp received any benefit.
4. Topstep has failed to state a claim against OneUp for fraud (count IV) because misrepresenting an intention to perform future conduct does not constitute fraud and because Topstep has failed to allege fraud with the requisite level of specificity.

OneUp submits a Memorandum of Law in support of this Motion to Dismiss. The Memorandum of Law sets forth in detail the reasons that the Second Amended Complaint is deficient and should be dismissed under Fed. R. Civ. P. 12(b)(6), and it is hereby incorporated by reference.

WHEREFORE, OneUp requests that this Court dismiss Topstep's Second Amended Complaint with prejudice.

Dated: October 27, 2017

ONEUP TRADER, LLC

By: David J. Wolfsohn
David J. Wolfsohn (*admitted pro hac vice*)
djwolfsohn@duanemorris.com
DUANE MORRIS LLP
30 S. 17th Street
Philadelphia, PA 19103
Phone: (215) 979-1000
Fax: (215) 979-1020

Attorneys for Defendant OneUp Trader, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of October, 2017 I caused a true and correct copy of the foregoing document to be served via CM/ECF on the below counsel of record:

Brian T. Noack, Esquire
Adam Wolek, Esquire
Taft Stegginius & Hollister, LLP
111 East Wacker Drive, Suite 2800
Chicago, IL 60601

/s/ David J. Wolfsohn
David J. Wolfsohn